

FEB 14 2001

Dear Mr.

This is in response to your letter concerning the application of section 13(a)(1) of the Fair Labor Standards Act (FLSA) to teachers. We regret the delay in responding.

You represent a public school district that employs teachers. The specific question is whether the District teachers would lose their status as exempt professional employees under the FLSA if they were given disciplinary deductions, without pay, of less than a full workweek. You state that in these particular circumstances, the suspensions without pay would be between one (1) and four (4) work days and would not be based on infractions of safety rules of major significance.

Teachers may qualify for exemption as bona fide professional employees if the duties tests described in section 541.3 of the regulations are met. The professional exemption for teachers under section 541.3, is applicable to an employee whose primary duty consists of the performance of:

- (1) teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed as a teacher in the school system or educational establishment or institution by which he or she is employed, and
- (2) whose work requires the consistent exercise of discretion and judgement in its performance; and
- (3) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- (4) who does not devote more than 20% of his or her hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work above described.

In addition to meeting specific duties tests, generally an employee must be paid on a salary or fee basis of not less than \$170 per week to be exempt as a professional. However, §541.3(e) and §541.314 of the regulations except from the salary requirement physicians, lawyers and teachers. With respect to teachers, an employee employed and engaged as a teacher in the activity of imparting knowledge, is excepted from the salary or fee requirement. Therefore, it is our opinion that a teacher may be suspended without

pay for disciplinary reasons, which are not related to infractions of safety rules of major significance without losing their status as exempt employees.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

Sincerely,

Thomas M. Markey
Acting Administrator

Enclosure